

GEORGETTE B. LEE  
and  
JAMES W. MCDADE

IBLA 70-537

Decided August 31, 1971

Oil and Gas Leases: Applications: Drawings

A protest against the result of a drawing of simultaneously filed oil and gas lease offers which charges collusion and other wrongdoing and implies a violation of the regulation requiring disclosure of all parties in interest is properly dismissed where the protestant fails to establish these charges or that the successful offer was in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent proof of such violation, absent which a protest is properly rejected.

IBLA 70-537 : Eastern States 6356 (Louisiana)  
GEORGETTE B. LEE : Protest of oil and  
and : gas lease offered dismissed  
JAMES W. MCDADE : Affirmed

#### DECISION

Georgette B. Lee and James W. McDade have appealed to the Director, Bureau of Land Management, from a decision of the Eastern States land office dismissing their protest against the issuance of lease ES6356 to Mr. George J. Wortell, successful drawee in the land office's simultaneous oil and gas drawing of October 1969. 1/

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1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970 (Cir. 2273, 35 F.R. 10009, 10012).

The record shows that in a drawing of the simultaneously filed cards held by the Eastern States land office October 1, 1969, George J. Wortell was the successful drawee for parcel 7, list 69-10, containing approximately 870.65 acres in Plaquemines Parish, Louisiana. Before a lease was issued to this offeror, appellants protested the drawing, asking that it be set aside. They charged that all cards submitted in this drawing through Western States Geological Survey, including Wortell's, should be disqualified because (1) the service allegedly sent out a notice to its clients prior to the drawing urging disregard of the regulation requiring disclosure of all parties in interest, and (2) several of the drawing cards submitted through Western States Geological Survey were altered prior to the drawing. The land office found that the offeror had complied with all the requirements of the leasing regulations and dismissed the protest in its entirety. The lease has not yet issued to Wortell pending the final administrative determination of this appeal.

Appellants' statement of reasons contains essentially the same arguments made before the land office. They again request that the Bureau's drawing of October 1, 1969, be set aside and that a new drawing for the parcel awarded to Wortell, be held, and that it be limited to those drawing entry cards properly submitted. In addition, they contend Wortell's offer should be disqualified because of his agency relationship with Western States Geological Survey. They allege that Wortell is chargeable with the wrongful actions of his agent, which wilfully urged its clients to alter drawing entry cards and to avoid the requirements of 43 CFR 3123.2(c)(3) (1969), now 43 CFR 3102.7 (1971). 2/

At issue is the following notice which was transmitted by Western States Geological Survey to all addresses utilizing P.O. Box 94, LeSueur, Minnesota, i.e., to all the "clients" of Western States Geological Survey prior to the October 1969 drawing:

IMPORTANT NOTICE

This past month we have eliminated parties in interest on the back of the blue cards that are filed with the Land Offices. There is a very limited time to notify the land offices of the proper identification and verification of the parties involved when a lease is won. The risk of losing a lease runs very high by not being able to meet this limit. We do not want our clients to have this misfortune.

We do not object to agreements between parties and filers as long as they are not listed on the cards. If the names must appear on the cards, they should be printed on the top portion of part 1, and have the WRITTEN SIGNATURE on the bottom of part two.

Appellants contend that this is a flagrant abuse and disregard of the Code of Federal Regulations with respect to the statement of interest required thereby. They support this contention

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2/ This section of the regulations requires the offeror to provide a signed statement that he is the sole party in interest in the offer and in the lease if issued; if he is not, he shall set forth the names of the other interested parties. If there are other parties interested in the offer, a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written.

with evidence sufficient to warrant a finding by this Board that a number of drawing entry cards actually were altered to delete the names of other parties in interest in those particular offers. However, appellants concede that they are unable to determine whether the successful drawee, Wortell, was in fact the sole party in interest or whether he concealed outstanding interests in accordance with the notice.

In response to another protest following the same drawing, a letter was received from a Denver attorney representing Western States Geological Survey in which the distribution of the notice was admitted. It was stated, however, that "within a matter of days" from the sending of the notice, Western States Geological Survey advised, in writing, each of the parties who had received such a notice that the notice was the result of a "mistake" and should be disregarded. It was said that this "corrective information" stressed the importance of a filer's making full disclosure to the Bureau of Land Management as to parties in interest. No copy or other evidence of such "corrective information" was provided, however.

This Board looks upon the action of the Western States Geological Survey with the gravest concern. It was an act of unmitigated irresponsibility, an open announcement that the filing service intended to disregard the regulations requiring, in effect, that those offerors who utilized the service falsely declare that they were the sole parties in interest when they were not, so as to conceal the interests of other parties from this Department. We have no doubt that the notice had effect, the degree of which is unknown, and we can hardly assume that the "corrective information" was a panacea which served to remedy all the ill consequences of the notice. We recommend that the practices of the filing services be carefully scrutinized with a view to precluding such conduct in the future.

Nevertheless, appellants have not presented any evidence to show that Wortell is not a qualified offeror, that he is not the sole party in interest in this particular offer, or that he has conspired to circumvent the sole party in interest requirement

of the regulations. <sup>3/</sup> As for appellants' contention involving the alteration of drawing cards, this has no direct application to the drawing entry card of the successful drawee in this case. The card submitted by Wortell is regular on its face and apparently complies with the requirements of the regulations.

We also find no merit in appellants' implication of Wortell's guilt by association through his agency relationship with the Western States Geological Survey. As appellants have indicated, the use of a filing service may create an agency relationship. However, an agency relationship, in and of itself, does not violate the Department's regulations. A filing service which is acting as an agent for an offeror is not prevented from filing drawing entry cards where there is no scheme, plan, or agreement between the parties wherein the filing service obtains an interest in the resultant lease. John V. Steffens et al., 74 I.D. 46 (1967), and cases cited therein.

In this case, appellants contend that the alleged collusion and wrongdoing of the filing service is to be held against its client, depriving the client of his priority status. The fact that other principals of the same agent may have been induced by the agent to disregard the regulations cannot operate to disqualify one who is in apparent compliance.

In the final analysis, appellants have not shown where the land office decision was in error or that the drawing should be set aside. The burden is on the protestant to show, as justification for the disqualification of the successful drawee in a simultaneous filing drawing procedure, that the offer is in fact defective. A suggestion of the possibility of violation of a regulation is not sufficient; a protestant must present competent proof of such violation. Absent an adequate showing

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<sup>3/</sup> The sole party in interest requirements of 43 CFR 3100.0-5 (b) (1971) provide that a sole party in interest in a lease or offer to lease is a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be a sole party in interest with respect to the lease in which any other party has any of the interest described in this section. The requirement of disclosure in an offer to lease of an offeror's or other party's interest in a lease, if issued, is predicated on a Departmental policy that all offerors and other parties having an interest in simultaneously filed offers to lease have an equal opportunity for success in the drawings to determine priorities.

of disqualification, a protest alleging disqualification is properly rejected. See Duncan Miller, A-29735 (September 17, 1963), and cases cited therein.

Accordingly, appellant's protest was properly dismissed by the Eastern States land office. Pursuant to this decision, the land office may proceed to issue the lease to the successful drawee, George J. Wortell.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 D.M. 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Edward W. Stuebing, Member

We concur:

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Francis Mayhue, Member

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Newton Frishberg, Chairman

